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10/798,137

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Timothy D. Killinger

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EXAMINER

HANSEN, JAMES ORVILLE

ART UNIT

PAPER NUMBER

3637

| SHORTENED STATUTORY PERIOD OF RESPONSE | MAIL DATE | DELIVERY MODE |
|--|-----------|---------------|
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3 MONTHS

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PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

# Office Action Summary

Application No.

10/798,137

Applicant(s)

KILLINGER ET AL.

Examiner

James O. Hansen

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 13 October 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-24 is/are pending in the application.
- 4a) Of the above claim(s) 7-10, 17-20 and 22 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-6, 11-16, 21, 23 and 24 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 13 October 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                  | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

**DETAILED ACTION**

***Election/Restrictions***

1. Claims 7-10, 17-20 & 22 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected species, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on October 13, 2006.
2. Applicant's election with traverse of the Group I species in the reply is acknowledged. The traversal is on the ground(s) that there would not be a serious burden on the examiner. This is not found persuasive because the disclosed species/inventions were directed to related products. The species were independent or distinct because Group I depicted a container including a perimeter beam and a lid with pivots for handles, whereas Group II depicted a container including an independent support beam, whereas Group III depicted a container having a non-pivoting lid and a drawer with support beams, whereas Group IV depicted a container constructed of rods, while Group V depicted a variety of storage accessories.
3. The related inventions were distinct since the inventions as claimed had a materially different design. Furthermore, the inventions as claimed did not encompass overlapping subject matter and applicant did not submit evidence or identified such evidence now of record showing the inventions as being obvious variants or clearly admit on the record that this is the case. Because these species/inventions are independent or distinct for the reasons given above and there would be a serious burden on the examiner if restriction is not required because the inventions require a different text search, restriction for examination purposes as

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indicated is proper. The requirement is still deemed proper and is therefore made FINAL.

***Claim Objections***

4. Claim 21 is objected to because of the following informality: the occurrence of "(Original)" in line 2 should be deleted. Appropriate correction is required.

***Claim Rejections - 35 USC § 112***

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:  
The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.
6. Claims 4, 6, 12, 21 & 24 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In Claims 4 & 21, the phrase "to form a pivot hinge about which the container is pivotable" is not properly understood since it is not clear how the "container" would be pivotable when the handles are moved as prescribed by applicant. In Claims 12 and 24, the phrase "the container lid" does not have a proper antecedent basis since only the container lid of the storage container has been previously set forth as opposed to a lid of a second storage container. Appropriate correction is required. Consequently, claim 6 is rejected because it is dependent upon an indefinite claim.

***Claim Rejections - 35 USC § 102***

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

8. Claims 1, 5, 12, 13, 15, 16 & 24 are rejected under 35 U.S.C. 102(b) as being anticipated by Manos et al., [U.S. Patent No. 5,816,674]. Manos (figures 1-8) teaches of a storage container (fig. 3) comprising a storage frame (20) having a frame bottom (42) and a plurality of interconnected side frames (34, 36, 40 e.g.) extending from and connected to the bottom frame, the side frames terminating at a top end that defines an opening into the frame interior; a container lid (32) having a lid rim (76), wherein the lid can be removably mounted on the frame with the rim registered with the top end of the frame; and a drawer (28) movably mounted within the storage frame for movement between extended [open position] and retracted [closed position] positions. The bottom frame comprising a bottom panel, wherein the side frames include a rear panel (40) extending from the bottom panel and two side panels (34, 36) extending from the bottom panel and connected to the bottom and rear panels. The bottom frame of the container is arranged so as to be stackable upon a lid of a similar container [note col. 3]. The container lid is arranged to be alternatively mounted to a first one or to a second one of the side frames. The frames being constructed of polyethylene.

9. Claims 1, 11-13, 15, 16 & 23 are rejected under 35 U.S.C. 102(b) as being anticipated by Schenker et al., [U.S. Patent No. 6,193,340]. Schenker (figures 1-11) teaches of a storage container (fig. 5) comprising a storage frame (22) having a frame

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bottom (30) and a plurality of interconnected side frames (34, 38 e.g.) extending from and connected to the bottom frame, the side frames terminating at a top end that defines an opening into the frame interior; a container lid (42) having a lid rim (134), wherein the lid can be removably mounted on the frame with the rim registered with the top end of the frame; and a drawer (26) movably mounted within the storage frame for movement between extended [open position] and retracted [closed position] positions. Two of the side frames (34) include a handle (94) for lifting the container. The bottom frame comprising a bottom panel, wherein the side frames include a rear panel (38) extending from the bottom panel and two side panels (34) extending from the bottom panel and connected to the bottom and rear panels. The bottom frame of the container is arranged so as to be stackable upon a lid of a similar container [note fig. 1]. The container lid is arranged to be alternatively mounted to a first one or to a second one of the side frames. The frames being constructed of polystyrene.

### ***Claim Rejections - 35 USC § 103***

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

11. Claims 2-4, 6, 11, 14, 21 & 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Manos in view of Cautereels et al., [U.S. Patent No. 5,205,413]. Manos teaches applicant's storage container as structurally disclosed above, including a support beam (not fig. 1 – top right end of the storage frame) extending between the second end of the side panels, but does not show the lid as being pivotal relative to the

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frame or show first and second handles mounted to the side frames and having the ability to engage the lid and form a pivot hinge. Cautereels (figures 1-11) is cited as an evidence reference since Cautereels teaches that it was known to provide a storage container (fig. 1) having a frame (12) with handles (32) on side frames that act as latches and are able to engage a lid (14) and form a pivot hinge so that the lid may be pivoted on opposite ends. Accordingly, the position is taken that it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the container of Manos so as to incorporate handles/latches on the side frames in view of Cautereels teaching since this arrangement would provide Manos with the means to 1) securely fasten the lid with respect to the storage frame and 2) allow the lid to be pivotally manipulated from either side while still remaining attached to the frame [note Cautereels abstract]. Both examples further increasing the usefulness and versatility of the storage container.

12. Claims 1-6, 11-16, 21, 23 & 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kahl et al., [U.S. Patent No. 5,125,697] in view of Manos. Kahl (figures 1-4) teaches of a storage container (fig. 1) comprising a storage frame (12) having a frame bottom (bottom panel) and a plurality of interconnected side frames (17, 18) extending from and connected to the bottom frame, the side frames terminating at a top end that defines an opening into the frame interior; and a container lid (11) having a lid rim (15), wherein the lid can be removably mounted on the frame with the rim registered with the top end of the frame. The container including first and second handles (13) mounted to a respective side frame with the handles being pivotally arranged to engage the lid and form a pivot hinge so that the lid is pivotally mounted [the examiner notes that when one handle is unlatched, the

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lid may be pivoted a small degree, while the examiner does not contend that the lid of Kahl can be pivoted through a certain range of degrees, it is noted that the claims do not include limitations that would preclude a minor rotation of the lid relative to the frame – as such, the position is taken that a slight pivoting motion of the prior art lid satisfies the claimed limitations]. The bottom frame comprising a bottom panel, wherein the side frames include a rear panel (17) extending from the bottom panel and two side panels (18) extending from the bottom panel and connected to the bottom and rear panels. The bottom frame of the container is arranged so as to be stackable upon a lid of a similar container as readily apparent to the examiner. The container lid being arranged to be alternatively mounted to a first one or to a second one of the side frames. The frames being constructed of a plastic material. Kahl teaches applicant's storage container as structurally disclosed above, but does not show a drawer movably mounted within the storage frame for movement between extended [open position] and retracted [closed position] positions. Manos is cited as an evidence reference since Manos teaches that it was known to provide a storage container (fig. 3) having a frame with a removable lid and a sliding drawer (28). Accordingly, the position is taken that it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the container of Kahl so as to incorporate a sliding drawer as taught by Manos because this arrangement would provide Kahl with an enhanced means for gaining access within the container when the container is stored in a stacked configuration, i.e., permits the removal and return of contents within the container while in a stacked configuration without disturbing the other containers in the stack by having to remove the container's lid [see col. 1 of Manos].



**Conclusion**

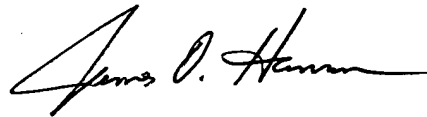
13. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Morrison, Gregory and Feldhahn describe containers with alternately hinged lids. Dickinson et al., describes a container with hinged handles for securing a lid. Weikert describes a plurality of stackable containers having hinged lids. Liu and Bolyos describe a plurality of stackable containers having removable lids and a drawer.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to James O. Hansen whose telephone number is 571-272-6866. The examiner can normally be reached on Monday-Friday between 8-4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lanna Mai can be reached on 571-272-6867. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



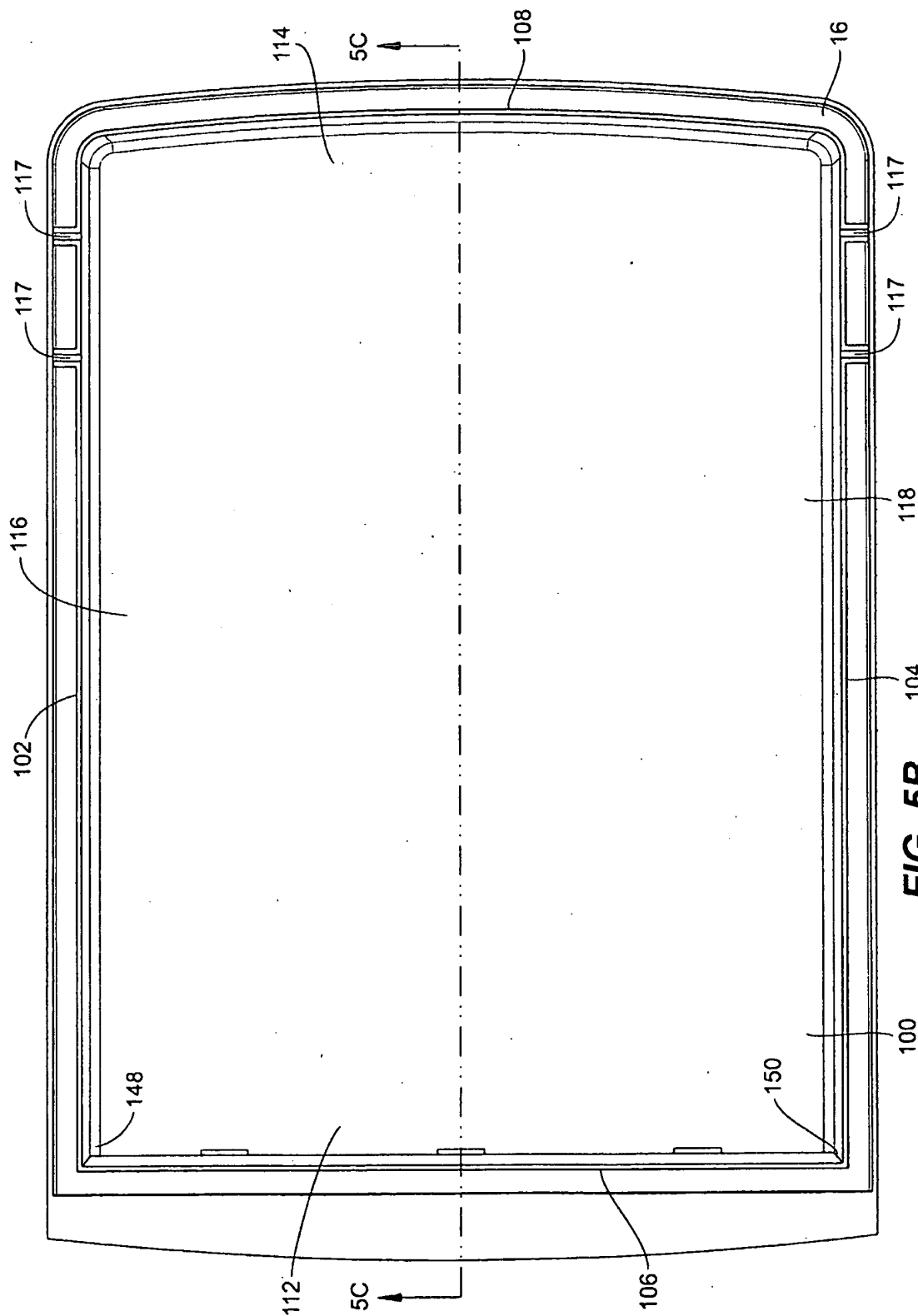
James O. Hansen  
Primary Examiner  
Art Unit 3637

JOH  
January 5, 2007



Approved  
12/29/06 *John*

## REPLACEMENT SHEET



**FIG. 5B**

Approved: *[Signature]*  
12/29/06

REPLACEMENT SHEET

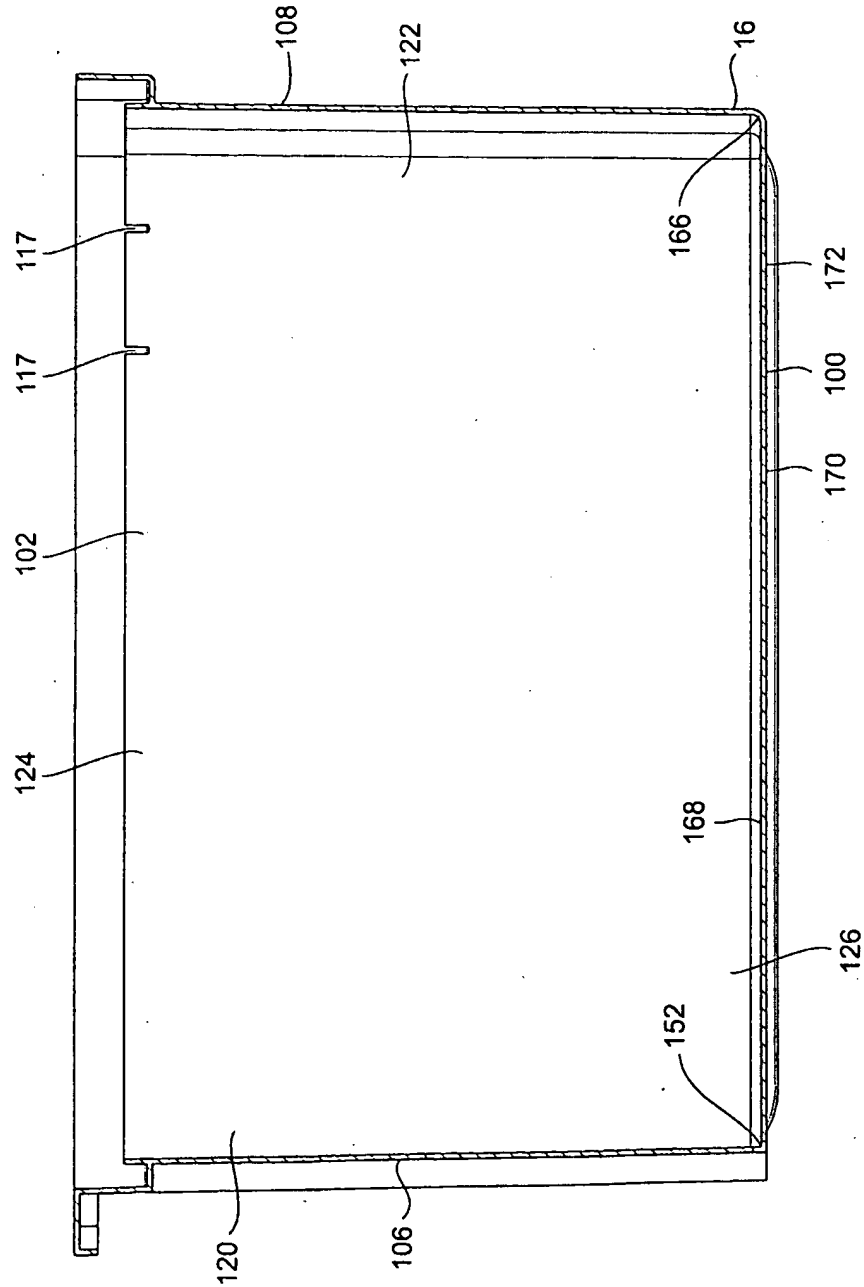


FIG. 5C

Approved  
12/29/06 Jph

Approved 12/29/06 [Signature]

Approved  
12/29/06 JCH